

REMARKS

In the Office Action mailed on July 13, 2007, the Examiner rejected claims 1, 2, 6, 7, 11, 12, 16-24, and 37-46 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Eckert (U.S. Patent No. 5,487,889) in view of Widemire (U.S. Patent No. 5,728,788); rejected claims 8, 9, 13, and 14 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Eckert in view of Widemire; and allowed claims 25-36.

By this Amendment, Applicant amends claims 1 and 37, cancels claim 39 without prejudice or disclaimer, and adds new claims 47-57. Claim 37 has been amended to substantially include, among other things, the subject matter of dependent claim 39. Claims 1, 2, 6-9, 11-38, and 40-57 are currently pending in this application, with claims 1, 25, 37, 47, and 54 being independent.

As an initial matter, Applicant takes this opportunity to thank the Examiner for allowing claims 25-36. Applicant respectfully traverses the Examiner's rejection of dependent claim 46. Claim 46 depends from allowed independent claim 25 and is allowable for at least this reason. Applicant therefore requests reconsideration and withdrawal of the Examiner's rejection of dependent claim 46.

Applicant respectfully traverses the Examiner's rejections of claims 1, 2, 6-9, 11-14, 16-24, 37, 38, and 40-45 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Eckert in view of Widemire. Insofar as the rejection of now-canceled dependent claim 39 is relevant to amended claim 37, Applicant respectfully disagrees with the assertions in that rejection. However, Applicant has amended independent claims 1 and 37 in order to advance prosecution of this case. Applicant notes that the Detailed

Action does not include a rejection of claim 15. Applicant requests that the Examiner address claim 15 in the next Action.

Amended independent claim 1 recites a substrate, a sheet of tissue, and “a protective liner removably attached to at least one of the substrate and the sheet of tissue to contact and cover the sheet of tissue.” Amended independent claim 37 contains a similar recitation. The Examiner contends that, in Eckert, cells 16 correspond to the claimed sheet of tissue, and layer of foam 21, envelope 12, and bottom membrane 15 together correspond to the claimed substrate. The Examiner asserts that Eckert discloses “a substrate completely surrounding the tissue (21, 12, 15) (Figures 1-5).” Office Action, page 3. As the Examiner admits, Eckert does not teach the claimed protective liner, but the Examiner contends that in Widemire, layer of foil 228 corresponds to the claimed sheet of tissue, and release sheets 30 correspond to the claimed protective liner.

Eckert, however, does not teach or suggest and in fact teaches away from “a protective liner removably attached to at least one of” layer of foam 21, envelope 12, and bottom membrane 15 and cells 16 “to contact and cover” cells 16. Because cells 16 are enclosed inside envelope 12 (see column 3, lines 57-58), no protective liner could “contact and cover” cells 16. Pores 24 cannot allow a protective liner to “contact and cover” cells 16 because pores 24 must be “small enough to prevent the passage of ... bacteria.” Column 5, lines 19-21. Additionally, Eckert teaches away from the claimed “protective liner” because “the invention relates to[] a bandage having a chamber containing cells” (column 1, line 17-18), and the bandage is intended to allow “cells 16 [to] continue to produce the cellular product, [so] the wound receives it in a

continuous manner” (column 3, lines 9-10). Thus, if a “protective liner [were] removably attached to at least one of” layer of foam 21, envelope 12, and bottom membrane 15 and cells 16 “to contact and cover” cells 16, removing the protective liner would expose the cells 16 and the wound would no longer receive cellular product “in a continuous manner.”

The bottom membrane 15 of Eckert also cannot correspond to the claimed protective liner because bottom membrane 15 is not “removably attached” to anything. In fact, “[t]he edges of top membrane 14 and bottom membranes 15 are joined by a leakproof seal 26, to provide a space or chamber 56 between the two membranes.” Column 6, lines 63-65. Thus, Eckert does not teach or suggest the claimed “protective liner,” and it in fact teaches away from it for the reasons stated above.

Widemire cannot cure the deficiencies of Eckert because, as described above, Eckert teaches away from “a protective liner removably attached to at least one of the substrate and the sheet of tissue to contact and cover the sheet of tissue.” According to the M.P.E.P. and Federal Circuit case law, prior art that teaches away from an aspect of the claimed invention cannot be combined with a reference teaching that aspect to render the claimed invention obvious. See M.P.E.P. § 2141.02(VI) citing W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983). Accordingly, neither Eckert nor Widemire, alone or in combination, teaches each and every element of independent claims 1 and 37. Applicant therefore requests that the rejection of independent claims 1 and 37 be reconsidered and withdrawn. Each of claims 2, 6-9, 11-24, 38, and 40-45 depends from one of claims 1 and 37 and is patentable for at least all of the reasons the base claims are patentable.

Each of new independent claims 47 and 54 recites a substrate that “is a bio-absorbable gel.” The Examiner contends, with respect to dependent claim 13, that “it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the substrate out of bio-a[b]sorbable gel.” Office Action, page 4. However, the Examiner cites no art showing this. Additionally, “the invention [of Eckert] relates to[] a bandage having a chamber containing cells” (column 1, line 17-18), and the bandage is intended to allow “cells 16 [to] continue to produce the cellular product, [so] the wound receives it in a continuous manner” (column 3, lines 9-10). If layer of foam 21, envelope 12, and/or bottom membrane 15 of Eckert were bio-absorbable, their absorption would expose the cells 16 and the wound would no longer receive cellular product “in a continuous manner.” Thus, Eckert teaches away from a substrate that “is a bio-absorbable gel.” Widemire is not cited for this deficiency in the teachings of Eckert and does not cure this deficiency. Accordingly, neither Eckert nor Widemire, alone or in combination, teaches each and every element of independent claims 47 and 54. Applicant therefore requests that the Examiner allow independent claims 47 and 54. Each of claims 48-53 and 55-57 depends from one of claims 47 and 54 and is patentable for at least all of the reasons the base claims are patentable.

For the above reasons, Applicant respectfully requests that the Examiner withdraw all rejections and allow all pending claims.

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

In discussing the specification, claims, and/or drawings in this Amendment, it is to be understood that Applicant is in no way intending to limit the scope of the claims to an exemplary embodiment described in the specification or abstract and/or shown in the drawings. Rather, Applicant is entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

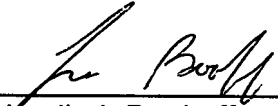
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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By: 

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